



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-FV-14-0027; FV14-985-3 IR]

Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Spearmint Oil Administrative Committee (Committee), for the 2014-15 and subsequent marketing years from \$0.10 to \$0.09 per pound of spearmint oil handled. The Committee locally administers the marketing order which regulates the handling of spearmint oil produced in the Far West.

Assessments upon spearmint oil handlers are used by the Committee to fund reasonable and necessary expenses of the program. The marketing year begins June 1 and ends May 31.

The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Manuel.Michel@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing

Order and Agreement Division, Fruit and Vegetable Program,
AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under
Marketing Order No. 985 (7 CFR part 985), as amended,
regulating the handling of spearmint oil grown in the Far
West (Washington, Idaho, Oregon, and designated parts of
Nevada and Utah), hereinafter referred to as the "order."
The order is effective under the Agricultural Marketing
Agreement Act of 1937, as amended (7 U.S.C. 601-674),
hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this
rule in conformance with Executive Orders 12866, 13563, and
13175.

This rule has been reviewed under Executive Order
12988, Civil Justice Reform. Under the order now in effect,
Far West spearmint oil handlers are subject to assessments.
Funds to administer the order are derived from such
assessments. It is intended that the assessment rate, as
issued herein, will be applicable to all assessable
spearmint oil beginning June 1, 2014, and continue until
amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2014-15 and subsequent marketing years from \$0.10 to \$0.09 per pound of spearmint oil handled.

The Far West spearmint oil marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with

the costs for goods and services in their local area and thus are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. All persons directly affected have an opportunity to participate and provide input.

For the 2003-04 and subsequent marketing years, the Committee recommended and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 19, 2014, and unanimously recommended 2014-15 expenditures of \$266,400 and an assessment rate of \$0.09 per pound of spearmint oil handled.

In comparison, last year's budgeted expenditures were \$220,970. The assessment rate of \$0.09 is \$0.01 lower than the rate currently in effect. The assessment rate decrease is necessary to reduce the funds held in the operating reserve in order to not exceed approximately one marketing year's operational expenses (§ 985.42(a)).

The major expenditures recommended by the Committee for the 2014-15 marketing year include \$25,500 for Committee expenses; \$195,900 for administrative expenses; and \$45,000

for market research and promotion expenses. Budgeted expenses for these items in 2013-14 were \$21,500 for Committee expenses; \$190,470 for administrative expenses; and \$9,000 for market research and promotion expenses.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the expected quantity of Far West spearmint oil handled. The Committee estimates that 2,500,000 pounds of spearmint oil will be handled, which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized operating reserve will be adequate to cover budgeted expenses. Funds in the operating reserve (currently \$321,689) will be reduced to comply with the maximum permitted by the order of approximately one marketing year's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee

meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2014-15 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 39 producers

of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers, and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to

produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2014-15 and subsequent marketing years from \$0.10 to \$0.09 per pound of spearmint oil handled. The Committee unanimously recommended 2014-15 expenditures of \$266,400 and an assessment rate of \$0.09. The assessment rate of \$0.09 is \$0.01 lower than the 2013-14 rate. The quantity of assessable spearmint oil for the 2014-15 marketing year is estimated at 2,500,000 pounds. Thus, the \$0.09 rate should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized operating reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2014-15 marketing year include \$25,500 for Committee expenses, \$195,900 for administrative expenses, and \$45,000 for market research and promotion expenses. Budgeted expenses for these items in 2013-14 were \$21,500, \$190,470, and \$9,000, respectively.

The lower assessment rate is necessary to reduce the operating reserve balance and not exceed approximately one marketing year's expenses as provided for in § 985.42. The operating reserve balance is expected to be \$321,689 on May 31, 2014. This amount exceeds the maximum authorized reserve amount of \$266,400 by \$55,289. Assessment income for 2014-15 is estimated at \$225,000, while expenses are estimated at \$266,400. The Committee anticipates using \$41,400 of their operating reserve fund for the 2014-15 marketing year.

The Committee discussed alternatives to this action. Leaving the assessment rate at the current \$0.10 per pound was initially considered, but not recommended, because the Committee would like to decrease the level of the operating reserve so that it is not more than approximately one marketing year's expenses. Lower assessment rates were considered, but also not recommended, because they would not generate the amount of income necessary to administer the

program. The Committee ultimately determined that an assessment rate of \$0.09 per pound, which should generate assessment income of \$225,000, combined with operating reserve funds, would be sufficient to meet its 2014-15 expenses.

A review of historical data and preliminary information pertaining to the upcoming marketing year indicates that the producer price for the 2014-15 season could range between \$17.00 and \$19.00 per pound of spearmint oil. Therefore, the estimated assessment revenue for the 2014-15 marketing year as a percentage of total grower revenue could range between 0.47 and 0.53 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 19, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2014-15 marketing year begins on June 1, 2014, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) this action decreases the assessment rate for assessable spearmint oil beginning with the 2014-15

marketing year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985 - MARKETING ORDER REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2014, an assessment rate of \$0.09 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: April 16, 2014.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

[FR Doc. 2014-09091 Filed 04/21/2014 at 8:45 am;
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